

1 John A. Russo, City Attorney (SBN 063203)
jrusso@oaklandcityattorney.org
 2 Barbara Parker, Chief Asst. City Attorney (SBN 069722)
bparker@oaklandcityattorney.org
 3 Mark Morodomi, Supervising Deputy City Attorney (SBN 120914)
mmorodomi@oaklandcityattorney.org
 4 Kathleen Salem-Boyd, Deputy City Attorney (SBN 100179)
ksalemboyd@oaklandcityattorney.org
 5 CITY OF OAKLAND, CALIFORNIA
 One Frank H. Ogawa Plaza, 6th Floor
 6 Oakland, California 94612
 Telephone: (510) 238-3034
 7 Facsimile: (510) 238-6500
 8 Richard M. Heimann (SBN 63607)
rheimann@lchb.com
 9 Joseph R. Saveri (SBN 130064)
jsaveri@lchb.com
 10 Eric B. Fastiff (SBN 182260)
efastiff@lchb.com
 11 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
 275 Battery Street, 30th Floor
 12 San Francisco, California 94111
 Telephone: (415) 956-1000
 13 Facsimile: (415) 956-1008
 14 James A. Quadra (SBN 131084)
quadra@meqlaw.com
 15 Sylvia Sokol (SBN 200126)
sokol@meqlaw.com
 16 MOSCONE, EMBLIDGE & QUADRA, LLP
 220 Montgomery Street
 17 Mills Tower, Suite 2100
 San Francisco, California 94104
 18 Telephone: (415) 362-3599
 Facsimile: (415) 362-2006
 19
Attorneys for Individual and Representative Plaintiff
 20 *City of Oakland, California*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

23 CITY OF OAKLAND, CALIFORNIA, a Municipal
 Corporation, on behalf of itself and all others
 24 similarly situated,

25 Plaintiff,
 v.

27 AIG FINANCIAL PRODUCTS CORP.; AIG
 SUNAMERICA LIFE ASSURANCE CO.; BANK
 28 (*caption continued on next page*)

Case No.

**COMPLAINT FOR VIOLATIONS
OF THE SHERMAN ACT, THE
CARTWRIGHT ACT, AND THE
UNFAIR COMPETITION LAW**

CLASS ACTION

JURY TRIAL DEMANDED

1 OF AMERICA CORPORATION; BANK OF
2 AMERICA, N.A.; BEAR STEARNS
COMPANIES, INC.; CAIN BROTHERS &
COMPANY, LLC; CDR FINANCIAL
3 PRODUCTS, INC.; FELD WINTERS
FINANCIAL, LLC; FINANCIAL GUARANTY
4 INSURANCE CO.; FINANCIAL SECURITY
ASSURANCE HOLDINGS, LTD.; FIRST
5 SOUTHWEST COMPANY; GE FUNDING
CAPITAL MARKET SERVICES, INC.;
6 GENWORTH FINANCIAL, INC.; GEORGE K.
BAUM & COMPANY; INVESTMENT
7 MANAGEMENT ADVISORY GROUP, INC.;
JPMORGAN CHASE & CO.; JPMORGAN
CHASE BANK, N.A.; KINSELL NEWCOMB &
8 DE DIOS, INC.; LEHMAN BROTHERS INC.;
MERRILL LYNCH & CO. INC.; MORGAN
9 KEEGAN & CO., INC.; MORGAN STANLEY;
NATIONAL WESTMINSTER BANK plc;
10 NATIXIS, S.A.; PACKERKISS SECURITIES,
INC.; PIPER JAFFRAY & CO.; SECURITY
CAPITAL ASSURANCE, INC.; SHOCKLEY
11 FINANCIAL CORP.; SOCIÉTÉ GÉNÉRALE;
SOUND CAPITAL MANAGEMENT, INC.;
12 TRINITY FUNDING COMPANY, LLC; UBS AG;
UBS SECURITIES LLC; UBS FINANCIAL
13 SERVICES INC.; WACHOVIA BANK, N.A.;
WACHOVIA CORPORATION; WINTERS & CO.
ADVISORS, LLC; XL ASSET FUNDING
14 COMPANY 1 LLC; XL CAPITAL, LTD.; and XL
LIFE INSURANCE & ANNUITY COMPANY,
15
16

17 Defendants.

18
19 Plaintiff City of Oakland, California (hereafter "Oakland" or "Plaintiff"),
20 individually and on behalf of a class of all those similarly situated, brings this action for treble
21 damages under the antitrust laws of the United States against Defendants, demands a trial by jury,
22 and alleges the following on information and belief except as to the contents of paragraphs 1 and
23 16 which are based on personal knowledge:

24 **NATURE OF THE CASE**

25 1. The City of Oakland, California has issued hundreds of millions of dollars
26 of tax-free bonds since 1992 and has purchased Guaranteed Investment Contracts ("GICs") to
27 allow Oakland to have funds available while earning a higher rate of return than they would if
28 Oakland simply invested the proceeds in a savings account. For example, Oakland issued tax-

1 free municipal bonds to, *inter alia*, rebuild the Oakland Coliseum, modernize its sewer system,
2 and provide for general obligations.

3 2. Oakland alleges a nationwide conspiracy among Defendants to rig bids, to
4 allocate customers and markets, and to fix, raise, maintain, or stabilize the returns received by
5 Oakland and the members of the Class for Municipal Derivatives (as defined below), including
6 but not limited to GICs, sold in the United States.

7 3. Oakland brings this action on behalf of itself and all entities that contracted
8 for Municipal Derivatives in the United States and its territories directly from Municipal
9 Derivatives Seller Defendants and Municipal Derivatives Broker Defendants, as defined in this
10 Complaint during the period from January 1, 1992 through December 31, 2007. As a result of
11 Defendants' unlawful conduct, Oakland and the Class, as defined in this Complaint, have paid
12 higher supracompetitive prices for these products, and therefore suffered injury to their business
13 and property.

JURISDICTION AND VENUE

15 4. Oakland brings this action pursuant to Section 4 of the Clayton Act,
16 15 U.S.C. §§ 15, for treble damages, as well as reasonable attorneys' fees and costs of suit, for
17 Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, the Cartwright Act,
18 California Business and Professions Code § 16720, *et seq.*, and the California Unfair Competition
19 Law, Business and Professions Code § 17200, *et seq.*

20 5. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331, 1337, and
21 1367 and by Section 4 of the Clayton Act, 15 U.S.C. § 15(a).

22 6. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15(a) and
23 22 and 28 U.S.C. § 1391(b), (c), and (d) because during the Class Period, one or more of the
24 Defendants resided, transacted business, was found, or had agents in this district, and because a
25 substantial part of the events giving rise to Oakland’s claims occurred, and a substantial portion
26 of the affected interstate trade and commerce described below was carried out in this district.

INTRA-DISTRICT ASSIGNMENT

7. Pursuant to Local Rules 3-5(b) and 3-2(c), this action should be assigned to the San Francisco/Oakland Division based on Oakland's location in the County of Alameda.

DEFINITIONS

8. **Bid:** As used herein, the term "Bid" means the Rate of Return offered by prospective Municipal Derivatives Sellers during the Competitive Bidding Process for GICs or the competitive processes by which other Municipal Derivatives are purchased by Government Entities.

9. **Competitive Bidding Process:** As used herein, the term "Competitive Bidding Process" means the process mandated by Treasury Regulation §148.5, *et seq.*, and detailed below in Paragraphs 74 through 92, by which at least three Municipal Derivatives Sellers submit Bids to the Municipal Derivatives Broker retained by the Government Entity seeking to purchase a Guaranteed Investment Contract, as that term is defined herein.

10. **Government Entity:** As used herein, the term "Government Entity" means any state, local or municipal body or any subdivision thereof. Excluded from the definition of Government Entity is any federal government body.

11. **Municipal Derivative:** As used herein, the term "Municipal Derivative" means a variety of financial instruments that Government Entities use to invest the proceeds of bond offerings while waiting to use bond proceeds for their purposes or to hedge and shift the interest-rate risk associated with the issuance of tax-exempt debt. As used herein, the term Municipal Derivative encompasses all of the following types of transactions:

12. a. **Guaranteed Investment Contract ("GIC"):** "Guaranteed Investment Contract" or "GIC" is a security in which a Government Entity contracts with a Municipal Derivative Counterparty, typically an investment bank or bond insurer with an AAA or AA credit rating, to invest the proceeds of a municipal bond offering for a fixed amount of time in exchange for a series of payments at a guaranteed Rate of Return over the life of the contract. A GIC is a Municipal Derivative, and are sometimes characterized as "forward purchase," "forward delivery" or "repurchase" agreements (typically used for debt service funds), or as "unsecured" GICs

1 (typically used for capital projects and subject to provisions allowing investment principal to be
2 drawn down pursuant to a set schedule). A GIC is similar to a bond, in that “principal” – the
3 proceeds of a municipal bond issue – is invested in exchange for payment of a certain fixed Rate
4 of Return determined by the terms of the contract.

5 b. Advance Refunding Escrow: An “advance refunding escrow” is an
6 arrangement by which the proceeds of a refunding issue (a bond issued to refund an outstanding
7 bond) are deposited into an escrow account for investment in an amount sufficient to pay the
8 principal of, and interest on, the underlying issue to be refunded on the original interest payment
9 and maturity dates.

10 c. Swap: A “swap” is a type of agreement frequently used to
11 minimize the interest rate risk Government Entities face when issuing large amounts of tax-
12 exempt debt obligations. A swap involves two Counterparties – the Government Entity and a
13 Municipal Derivatives Seller – and is essentially the sale of an instrument and the simultaneous
14 purchase of another instrument for purposes of enhancing the Counterparties’ respective holdings.
15 Government Entities use swaps to achieve desired tax results, or to alter or protect various
16 features of an existing municipal bond portfolio. There are several types of swaps: (a) floating-
17 for-fixed interest swap; (b) fixed-for-floating interest swap; and (c) floating-for-floating (basis-
18 rate) swap, where the two are based on different indices (typically the LIBOR or BMA indices).
19 Government Entities, even those with sophisticated and experienced municipal finance
20 departments, retain a Municipal Derivatives Broker (including many of those named as
21 Defendants herein) as “swap advisors” to aid in the swap transaction.

22 d. Option: An “option” is one of two types of agreements used to
23 shift a Government Entity’s tax-exempt securities holdings typically acquired in association with
24 issuance of municipal bonds.

25 i. A Put Option is a provision in a bond contract where the
26 investor has the right, on specified dates after required notification, to surrender the securities to
27 the issuer or the issuer’s agent at the predetermined price (usually par value).

28

8 f. Interest Rate Floors and Collars: Interest rate “floors” and “collars”
9 are agreements in which a Government Entity agrees with a Municipal Derivatives Seller (the
10 Counterparty) to pay fixed rates of interest on an investment of variable-rate debt, either agreeing
11 to pay the Counterparty an interest rate at or above a specified rate (a “floor”) or no more or less
12 than a particular interest rate within range of interest rates (a “collar”).

13 12. Municipal Derivatives Broker: As used herein, the term “Derivatives
14 Broker” means an entity retained by a Government Entity to oversee the processes, including the
15 Competitive Bidding Process, pursuant to which Municipal Derivatives are purchased.
16 Derivatives Brokers act as fiduciaries of a Government Entity seeking to purchase Municipal
17 Derivatives, often acting as swap advisors in addition to overseeing the competitive bidding
18 undertaken by the Government Entity for those Municipal Derivatives sold through ostensibly
19 competitive means. Derivatives Brokers enjoy mutually symbiotic and incestuous relationships
20 with large investment banks and insurance companies, and act as “finders” of municipal securities
21 business for the securities dealers or investment banks that often pay kickbacks to the Municipal
22 Derivatives Brokers in the form of finders’ fees and monthly retainers.

23 13. Municipal Derivatives Counterparty: As used herein, the term “Municipal
24 Derivatives Counterparty” or “Counterparty” means a Municipal Derivatives Seller with whom a
25 Government Entity contracts for a transaction involving the purchase of one or more of the
26 Municipal Derivatives described herein.

14. Municipal Derivatives Seller: As used herein, the term “Derivatives Seller” means an entity offering to enter into a Municipal Derivative transaction with a Government Entity pursuant to the Competitive Bidding Process or other competitive process.

15. Rate of Return: As used herein, the term “Rate of Return” means the fixed amount, typically expressed as a percentage of the underlying bond proceeds amount or as a specific interest rate, offered by a potential Municipal Derivatives Seller and ultimately received by a Government Entity after it enters into the GIC or similar Municipal Derivative transaction with a Municipal Derivatives Counterparty. The Rate of Return is an element of the Competitive Bidding Process where competition is intended to occur for the benefit of bond issues. It was a focus of Defendants’ illegal bid-rigging and customer allocation scheme alleged herein.

PARTIES

Plaintiff

16. Plaintiff, the City of Oakland, California, is a municipal corporation and a Government Entity. Oakland purchased Municipal Derivatives, including from one or more Derivatives Seller Defendants pursuant to a Competitive Bidding Process overseen by one or more of the Derivative Broker Defendants during the Class Period. Oakland purchased millions of dollars' worth of Municipal Derivatives from one or more of the Derivatives Seller Defendants and retained one or more of the Derivatives Broker Defendants to oversee, supervise and manage the processes, including the Competitive Bidding Process, undertaken to purchase the Municipal Derivatives. As a result of the unlawful conspiracy alleged herein, Oakland was injured in its business or property. Oakland has contracted for its GICs with a variety of brokers and underwriters, including Bank of America, FSA Management (a subsidiary of Financial Security Assurance Holdings, Ltd.) and IXIS Corporate & Investment Banking, on which the Department of Justice has served subpoenas as part of its investigation into Municipal Derivative bid-rigging.

Municipal Derivatives Seller Defendants

17. Defendant AIG Financial Products Corp. (“AIG Financial”) is a Delaware corporation maintaining its principal place of business in Wilton, Connecticut. It is a wholly

1 owned subsidiary of AIG International Inc. During the Class Period, AIG Financial issued and
2 sold Municipal Derivatives to Oakland and/or members of the Class in the United States.

3 a. AIG Financial is part of the Capital Markets arm of its parent
4 company AIG, and raises funds for AIG in part through investment in Municipal Derivatives.

5 b. In November, 2006, AIG Financial received a subpoena from the
6 Antitrust Division of the United States Department of Justice in connection with its grand jury
7 investigation into anticompetitive conduct in the Municipal Derivatives business.

8 18. Defendant AIG SunAmerica Life Assurance Co., (“AIG SunAmerica”) is
9 an Arizona corporation maintaining its principal place of business in Los Angeles, California.
10 During the Class Period, AIG SunAmerica issued and sold Municipal Derivatives to Oakland
11 and/or members of the Class in the United States.

12 a. In November, 2006, AIG SunAmerica received a subpoena from
13 the Securities and Exchange Commission in connection with the SEC’s investigation into
14 anticompetitive practices in the Municipal Derivatives industry.

15 19. Defendant Bank of America Corporation (“BOA”) is a Delaware
16 corporation with its principal place of business in Charlotte, North Carolina. During the time
17 period covered by this complaint, Bank of America was headquartered in San Francisco,
18 California and conducted substantial business operations in this judicial district. During the Class
19 Period, BOA issued and sold Municipal Derivatives to Oakland and/or members of the Class in
20 the United States, either directly or through its wholly-owned subsidiary Defendant Bank of
21 America, N.A (“BANA”).

22 20. Defendant Bank of America, N.A. (“BANA”), a wholly-owned subsidiary
23 of Defendant BOA, is a Delaware corporation with its principal place of business in Charlotte,
24 North Carolina. During the Class Period, BANA issued and sold Municipal Derivatives to
25 Oakland and/or members of the Class in the United States.

26 a. In November, 2006, BOA received subpoenas from the Antitrust
27 Division of the United States Department of Justice and the Securities and Exchange Commission
28

1 in connection with those agencies' investigations into anticompetitive conduct in the Municipal
2 Derivatives business.

3 b. In February, 2007, BOA entered into a Corporate Conditional
4 Leniency agreement with the DOJ in connection with the antitrust investigation into
5 anticompetitive conduct in the Municipal Derivatives business, indicating that BOA had engaged
6 in potentially criminal anti-competitive conduct in relation to the Municipal Derivatives industry.
7 Such leniency agreements, which insulate the corporate applicant from criminal antitrust
8 prosecution as long as it cooperates, are only entered into after the cooperating company has
9 proactively offered the DOJ evidence of *per se* violations of the antitrust laws. Such leniency
10 agreements only cover criminal antitrust violations, and do not insulate companies from criminal,
11 civil or administrative actions in other areas.

12 c. On February 4, 2008, Defendant BOA's subsidiary BANA received
13 a so-called Wells notice from the SEC, advising the company that the SEC staff has
14 recommended that the SEC bring a civil or administrative action against BANA in connection
15 with its investigation of anticompetitive practices in the Municipal Derivatives industry.

16 d. BOA and BANA are also targets of investigation by the Internal
17 Revenue Service ("IRS") in connection with anticompetitive practices in the Municipal
18 Derivatives industry. In February, 2007, concurrently with its entrance into the DOJ's Corporate
19 Leniency agreement covering criminal antitrust violations, BOA entered into an agreement with
20 the IRS related to BOA's role in providing GICs and other agreements in connection with certain
21 "blind pool" municipal bond transactions.

22 e. BOA has also been implicated in a bid-rigging and kickback
23 scheme involving a large GIC that BOA sold to the City of Atlanta in 2002 that also involved
24 Derivative Broker Defendants CDR and Feld Winters as well as Derivative Seller Defendants
25 UBS and Piper Jaffray.

26 21. Defendant Bear Stearns Companies, Inc. ("Bear Stearns") is a Delaware
27 corporation with its principal place of business in New York, New York. During the Class
28

1 Period, Bear Stearns issued and sold Municipal Derivatives to Oakland and/or members of the
2 Class in the United States.

3 a. The SEC has previously investigated Bear Stearns' municipal
4 bond department and its municipal bond underwriting practices.

5 b. Stephen Salvadore, currently the Senior Managing Director and
6 Manager of Municipal Capital Markets Derivatives and Investments at Bear Stearns, has
7 disclosed that he is a target of the grand jury convened in the Southern District of New York by
8 the Antitrust Division of the Department of Justice investigating antitrust and other violations
9 related to anticompetitive conduct in the Municipal Derivatives business. Target letters of the
10 kind received by Salvadore are an indication that the DOJ has substantial evidence of the
11 commission of a federal crime and typically a sign that the recipient will soon be indicted absent a
12 plea agreement or cooperation deal.

13 c. In addition, at least one former Bear Stearns employee is a target of
14 both the SEC and the grand jury convened in the Southern District of New York by the Antitrust
15 Division of the Department of Justice investigating antitrust and other violations related to
16 anticompetitive conduct in the Municipal Derivatives business.

17 d. Patrick Marsh, who worked at Bear Stearns from 2000 to 2005 and
18 whose last position at the company was Managing Director and Chief of Municipal Structuring,
19 has disclosed that he was the recipient of a Wells notice from the SEC recommending civil or
20 administrative action against him in connection with securities violations related to bidding
21 procedures in the Municipal Derivatives industry during his tenure at Bear Stearns. Marsh also
22 disclosed that he is a target of the grand jury convened in the Southern District of New York by
23 the Antitrust Division of the Department of Justice investigating antitrust and other violations
24 related to anticompetitive conduct in the Municipal Derivatives business. Target letters of the
25 kind received by Marsh are an indication that the DOJ has substantial evidence of the commission
26 of a federal crime and typically a sign that the recipient will soon be indicted absent a plea
27 agreement or cooperation deal. Marsh was also subpoenaed by the SEC in connection with its
28

1 investigation into wrongdoing associated with municipal bond derivatives transactions in
2 Jefferson County, Alabama.

3 22. Defendant Financial Guaranty Insurance Co. (“FGIC”) is a Delaware
4 corporation maintaining its principal place of business in New York, New York. During the
5 Class Period, FGIC, a former affiliate of General Electric, issued and sold Municipal Derivatives
6 to Oakland and/or members of the Class in the United States.

7 a. FGIC has received a subpoena from the Securities and Exchange
8 Commission in connection with the SEC’s investigation into anticompetitive practices in the
9 Municipal Derivatives industry.

10 23. Defendant Financial Security Assurance Holdings, Ltd. (“FSA Holdings”)
11 is a New York corporation maintaining its principal place of business in New York, New York.
12 During the Class Period, FSA Holdings issued and sold Municipal Derivatives to Oakland and/or
13 members of the Class in the United States, either directly or through its wholly-owned subsidiary
14 FSA Capital Management Services, LLC, (“FSA Capital”), a Delaware limited liability company
15 headquartered in New York City.

16 a. In November, 2006 FSA Holdings received subpoenas from the
17 Antitrust Division of the United States Department of Justice and the Securities and Exchange
18 Commission in connection with those agencies’ investigations into anticompetitive conduct in the
19 Municipal Derivatives business.

20 b. On February 4, 2008, FSA Holdings received a so-called Wells
21 notice from the Philadelphia regional office of the SEC, informing the company that the SEC
22 staff had recommended civil or administrative action against FSA Holdings in connection with its
23 investigation into anticompetitive practices in the Municipal Derivatives industry. The Wells
24 notice issued to FSA Holdings related to alleged violations of Section 10(b) of the Securities
25 Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

26 24. Defendant First Southwest Company (“First Southwest”) is a Delaware
27 corporation with its principal place of business in Dallas, Texas. During the Class Period, First
28

1 Southwest issued and sold Municipal Derivatives to Oakland and/or members of the Class in the
2 United States.

3 a. First Southwest has received a subpoena from the Securities and
4 Exchange Commission in connection with the SEC's investigation into anticompetitive practices
5 in the Municipal Derivatives industry.

6 25. Defendant Genworth Financial, Inc. ("Genworth") is a New York
7 corporation maintaining its principal place of business at Fairfield, Connecticut. Genworth issued
8 and sold Municipal Derivatives to Oakland and/or members of the Class in the United States.

9 a. Genworth has received subpoenas from the Antitrust Division of
10 the United States Department of Justice and the Securities and Exchange Commission in
11 connection with those agencies' investigations into anticompetitive conduct in the Municipal
12 Derivatives business.

13 26. Defendant GE Funding Capital Market Services, Inc. ("GE Funding") is a
14 Delaware corporation maintaining its principal place of business in New York, New York. GE
15 Funding is a member of the GE Funding Capital Market Services Group (GE Funding CMS).
16 During the Class Period, GE Funding issued and sold Municipal Derivatives to members of the
17 Class.

18 27. Defendant JPMorgan Chase & Co. ("JPMorgan") is a Delaware
19 corporation maintaining its principal place of business in New York, New York. During the
20 Class Period, JPMorgan issued and sold Municipal Derivatives to Oakland and/or members of the
21 Class in the United States.

22 a. In November, 2006, JPMorgan received subpoenas from the
23 Antitrust Division of the United States Department of Justice and the Securities and Exchange
24 Commission in connection with those agencies' investigations into anticompetitive conduct in the
25 Municipal Derivatives business.

26 b. At least three former JPMorgan employees are targets of the Justice
27 Department's grand jury investigation into anticompetitive practices in the Municipal Derivatives
28 industry.

1 c. Samuel Gruer, who worked at JPMorgan from 1994 through 2006
2 and whose last position was Vice-President in the Derivatives Marketing unit of the company's
3 Tax-Exempt Capital Markets Group, has recently disclosed that he is a target of the grand jury
4 convened in the Southern District of New York by the Antitrust Division of the Department of
5 Justice investigating antitrust and other violations related to anticompetitive conduct in the
6 Municipal Derivatives business. Target letters of the kind received by Gruer are an indication
7 that the DOJ has substantial evidence of the commission of a federal crime and typically a sign
8 that the recipient will soon be indicted absent a plea agreement or cooperation deal.

9 d. Shlomi Raz, who worked at JPMorgan from 1992 to 2003, has also
10 recently disclosed that he is a target of the grand jury convened in the Southern District of New
11 York by the Antitrust Division of the Department of Justice investigating antitrust and other
12 violations related to anticompetitive conduct in the Municipal Derivatives business. Target letters
13 of the kind received by Raz are an indication that the DOJ has substantial evidence of the
14 commission of a federal crime and typically a sign that the recipient will soon be indicted absent a
15 plea agreement or cooperation deal.

16 e. James Hertz, who worked at JPMorgan from 1994 until he was
17 fired from the firm in January, 2008, has also recently disclosed that JPMorgan informed him that
18 he was under investigation by the DOJ for what Hertz described as “conduct on the municipal
19 derivatives marketing desk,” an indication that the investigation involves JPMorgan’s entire
20 municipal derivatives business, which necessarily includes Municipal Derivatives. Target letters
21 of the kind received by Hertz are an indication that the DOJ has substantial evidence of the
22 commission of a federal crime and typically a sign that the recipient will soon be indicted absent a
23 plea agreement or cooperation deal.

24 28. Defendant JPMorgan Chase Bank, N.A. (“JPMorgan N.A.”) is a national
25 banking association with headquarters in Ohio, and is a subsidiary of JP Morgan Chase. During
26 the Class Period, JPMorgan N.A. issued and sold Municipal Derivatives to Oakland and/or
27 members of the Class in the United States.

1 29. Defendant Kinsell Newcomb & DeDios Inc. (“KND”) is a California
 2 corporation with its principal place of business in Solano Beach, California. During the Class
 3 Period, KND issued and sold Municipal Derivatives to Oakland and/or members of the Class in
 4 the United States.

5 a. KND has received subpoenas from the Antitrust Division of the
 6 United States Department of Justice and the Securities and Exchange Commission in connection
 7 with those agencies’ investigations into anticompetitive conduct in the Municipal Derivatives
 8 business.

9 30. Defendant Lehman Brothers Inc. (“Lehman Brothers”) is a Delaware
 10 corporation maintaining its principal place of business in New York, New York. During the
 11 Class Period, Lehman Brothers issued and sold Municipal Derivatives to members of the Class.
 12 Lehman is a wholly-owned subsidiary of Lehman Brothers Holdings Inc.

13 31. Defendant Merrill Lynch & Co. Inc. (“Merrill Lynch”) is a Delaware corporation
 14 maintaining its principal place of business in New York, New York. During the Class Period,
 15 Merrill Lynch issued and sold Municipal Derivatives to members of the Class.

16 32. Defendant Morgan Stanley (“Morgan Stanley”) is a Delaware corporation
 17 maintaining its principal place of business in New York, New York. During the Class Period,
 18 Morgan Stanley issued and sold Municipal Derivatives to members of the Class.

19 33. Defendant National Westminster Bank plc (“NatWest”) is a public limited
 20 corporation maintaining its principal place of business in London, England. During the Class
 21 Period, NatWest issued and sold Municipal Derivatives to members of the Class. NatWest is a
 22 subsidiary of Royal Bank of Scotland.

23 34. Defendant Natixis, S.A. (“Natixis”), formerly known as IXIS Corporate &
 24 Investment Bank and CDC Funding Corp., is a foreign corporation maintaining its principal place
 25 of business in Paris, France. During the Class Period, Natixis issued and sold Municipal
 26 Derivatives to Oakland and/or members of the Class in the United States.

27 a. In November, 2006, Natixis’ predecessor IXIS Corporate &
 28 Investment Bank received a subpoena from the Antitrust Division of the United States

1 Department of Justice in connection with its grand jury investigation into anticompetitive conduct
2 in the Municipal Derivatives business.

3 35. Defendant Piper Jaffray & Co. (“Piper Jaffray”) is a Delaware corporation
4 with its principal place of business in Minneapolis, Minnesota. During the Class Period, Piper
5 Jaffray issued and sold Municipal Derivatives to Oakland and/or members of the Class in the
6 United States.

7 a. Piper Jaffray has received subpoenas from the Antitrust Division of
8 the United States Department of Justice and the Securities and Exchange Commission in
9 connection with those agencies’ investigations into anticompetitive conduct in the Municipal
10 Derivatives business.

11 b. James Towne, employed as Managing Director of Piper Jaffray’s
12 municipal derivatives group until January, 2008, recently disclosed that Piper Jaffray informed
13 him that he is under investigation by the Antitrust Division of the Department of Justice for
14 potential antitrust and other violations relating to the Municipal Derivatives industry.

15 36. Defendant Security Capital Assurance, Inc. (“Security Capital”) is a
16 foreign corporation maintaining its principal place of business in Hamilton, Bermuda. During the
17 Class Period, Security Capital, either directly or through its affiliates Defendants XL Capital, Ltd.
18 and XL Asset Funding Company 1 LLC, issued and sold Municipal Derivatives to Oakland
19 and/or members of the Class in the United States.

20 37. Defendant Société Générale (“SocGen”) is a French corporation
21 headquartered in Paris. During the Class Period, SocGen issued and sold Municipal Derivatives
22 to Oakland and/or members of the Class in the United States, either directly or through its wholly-
23 owned subsidiaries Société Générale Americas, Inc., a Delaware corporation headquartered in
24 New York, New York and/or SG Americas Securities, LLC, a Delaware limited liability
25 corporation also headquartered in New York, New York.

26 a. SocGen has received a subpoena from the Securities and Exchange
27 Commission in connection with the SEC’s investigation into anticompetitive practices in the
28 Municipal Derivatives industry.

1 b. SocGen's Municipal Derivatives business is being scrutinized by
2 the IRS, which is investigating improper kickbacks to Defendant CDR related to a GIC brokered
3 by CDR.

4 38. Defendant Trinity Funding Company, LLC (“GE Trinity”) is a New York
5 limited liability corporation maintaining its principal place of business in New York, New York.
6 GE Trinity is a member of the GE Funding Capital Market Services Group (GE Funding CMS).
7 During the Class Period, GE Trinity issued and sold Municipal Derivatives to members of the
8 Class.

9 39. Defendant UBS AG (“UBS”) is a Swiss corporation with its headquarters
10 in Basel, Switzerland. During the Class Period, UBS issued and sold Municipal Derivatives to
11 Oakland and/or members of the Class in the United States, either directly or through its wholly-
12 owned subsidiary, Defendant UBS Securities, LLC (“UBS Securities”).

13 a. In November, 2006, UBS received subpoenas from the Antitrust
14 Division of the United States Department of Justice and the Securities and Exchange Commission
15 in connection with those agencies' investigations into anticompetitive conduct in the Municipal
16 Derivatives business.

17 b. On February 4, 2008, UBS received a so-called Wells notice from
18 the Philadelphia regional office of the SEC advising the company that the SEC staff had
19 recommended that the SEC bring a civil action against UBS in connection with the
20 anticompetitive practices associated with municipal bond derivatives.

21 c. Peter Ghavami, until December 2007 the Managing Director and
22 Co-Manager of Municipal Derivatives at UBS Securities in New York and London, recently
23 disclosed that he is a target of the grand jury convened in the Southern District of New York by
24 the Antitrust Division of the Department of Justice investigating antitrust and other violations
25 related to anticompetitive conduct in the Municipal Derivatives business. Target letters of the
26 kind received by Ghavami are an indication that the DOJ has substantial evidence of the
27 commission of a federal crime and typically a sign that the recipient will soon be indicted absent a
28 plea agreement or cooperation deal.

1 40. Defendant UBS Securities LLC, formerly known as UBS Warburg LLC, is
2 a Delaware corporation with its principal place of business in New York, New York. It is a
3 subsidiary of UBS AG. During the Class Period, UBS Securities issued and sold Municipal
4 Derivatives to members of the Class.

5 41. Defendant UBS Financial Services Inc. (“UBS Financial”), formerly
6 known as PaineWebber Inc., is a Delaware corporation with its principal place of business in New
7 York, New York. It is a subsidiary of UBS AG. In 2000, UBS Financial was purchased by
8 Defendant UBS AG. During the Class Period, UBS Financial issued and sold Municipal
9 Derivatives to members of the Class.

10 42. Defendant Wachovia Bank, N.A. (“Wachovia N.A.”) is a North Carolina
11 corporation with its principal place of business in Charlotte, North Carolina. During the Class
12 Period, Wachovia N.A. issued and sold Municipal Derivatives to Oakland and/or members of the
13 Class in the United States.

14 43. Defendant Wachovia Corporation (“Wachovia”) is a North Carolina
15 corporation with its principal place of business in Charlotte, North Carolina. During the Class
16 Period, Wachovia issued and sold Municipal Derivatives to Oakland and/or members of the Class
17 in the United States either directly or through its wholly-owned subsidiary Defendant Wachovia
18 Bank, N.A. (“Wachovia N.A.”).

19 a. In November, 2006, Wachovia received subpoenas from the
20 Antitrust Division of the United States Department of Justice and the Securities and Exchange
21 Commission in connection with those agencies’ investigations into anticompetitive conduct in the
22 Municipal Derivatives business.

23 b. Both the DOJ and the SEC have advised Wachovia that they
24 believe Wachovia N.A. employees engaged in improper conduct in relation to competitively-bid
25 municipal derivatives transactions.

26 c. Two Wachovia N.A. employees working in the company’s
27 Derivatives Marketing Department, Martin McConnell (the Managing Director of Marketing) and
28 Paul Jay Saunders (the Director of Marketing), recently disclosed that they are targets of the

1 grand jury convened in the Southern District of New York by the Antitrust Division of the
 2 Department of Justice investigating antitrust and other violations related to anticompetitive
 3 conduct in the Municipal Derivatives business. Target letters of the kind received by McConnell
 4 and Saunders are an indication that the DOJ has substantial evidence of the commission of a
 5 federal crime and typically a sign that the recipient will soon be indicted absent a plea agreement
 6 or cooperation deal. Wachovia recently placed both Saunders – who worked for Defendant Bank
 7 of America from 1998 through 2003 – and McConnell on administrative leave following their
 8 disclosure that they were targets of the government’s grand jury investigation.

9 44. Defendant XL Asset Funding 1, LLC (“XLAF”) is a Delaware limited
 10 liability corporation maintaining its principal place of business in Schaumburg, Illinois. During
 11 the Class Period, XLAF issued and sold Municipal Derivatives to Oakland and/or members of the
 12 Class in the United States.

13 a. XLAF received subpoenas from the Antitrust Division of the
 14 United States Department of Justice and the Securities and Exchange Commission in connection
 15 with those agencies’ investigations into anticompetitive conduct in the Municipal Derivatives
 16 business.

17 45. Defendant XL Life Insurance & Annuity Company (“XL Life Insurance”)
 18 is a subsidiary of XLAF maintaining its principal place of business in Schaumburg, Illinois.
 19 During the Class Period, XL Life Insurance issued and sold Municipal Derivatives to Oakland
 20 and/or members of the Class.

21 46. Defendant XL Capital, Ltd. (“XL Capital”) is a foreign corporation
 22 maintaining its principal place of business in Hamilton, Bermuda. During the Class Period, XL
 23 Capital, either directly or through its affiliates Defendants Security Capital and XL Asset Funding
 24 1, LLC issued and sold Municipal Derivatives to Oakland and/or members of the Class in the
 25 United States.

26 **Municipal Derivatives Broker Defendants**

27 47. Defendant Cain Brothers & Company, LLC (“Cain”) is a Delaware limited
 28 liability corporation with its principal place of business in New York, New York. During the

1 Class Period, Cain acted as a broker for Oakland and/or members of the Class in purchasing
2 Municipal Derivatives from one or more of the Municipal Derivatives Seller Defendants.

3 a. Cain was subpoenaed by the SEC in connection with its
4 investigation of anticompetitive practices in the Municipal Derivatives industry.

5 48. Defendant CDR Financial Products, Inc. (“CDR”) is a Delaware
6 corporation maintaining its principal place of business at Beverly Hills, California. During the
7 Class Period, CDR acted as a broker for Oakland and/or members of the Class in purchasing
8 Municipal Derivatives from one or more of the Municipal Derivatives Seller Defendants.

9 a. CDR’s California offices were raided by the FBI in November,
10 2006, at the start of the government’s investigation into anticompetitive conduct in the Municipal
11 Derivatives market.

12 b. CDR has been the subject of a series of long-standing federal
13 governmental investigations involving its dealings with other participants in the municipal
14 derivatives market, including Defendant Bank of America.

15 49. Defendant Feld Winters Financial, LLC (“Feld Winters”), is a California
16 limited liability corporation with its principal place of business in Sherman Oaks, California.
17 During the Class Period, Feld Winters acted as a broker for Oakland and/or members of the Class
18 in purchasing Municipal Derivatives from one or more of the Municipal Derivatives Seller
19 Defendants.

20 a. Feld Winters was subpoenaed by the Justice Department in
21 connection with its investigation of anticompetitive conduct in the Municipal Derivatives
22 business.

23 50. Defendant George K. Baum & Company (“Baum”) is a Missouri
24 corporation with its principal place of business in Kansas City, Missouri. During the Class
25 Period, Baum acted as a broker for Oakland and/or members of the Class in purchasing Municipal
26 Derivatives from one or more of the Municipal Derivatives Seller Defendants.

27 a. Baum was subpoenaed by the SEC in connection with its
28 investigation of anticompetitive practices in the Municipal Derivatives industry.

b. Baum has been the target of previous governmental investigations related to its Municipal Derivatives business.

c. On November 10, 2006, Baum settled allegations with the IRS that it diverted profits from municipal bond deals. In one instance the IRS alleged that bidding was rigged in the selection of a GIC provider for a \$150 million loan pool underwritten by Baum in 1999 and issued by the Illinois Development Finance Authority.

51. Defendant Investment Management Advisory Group, Inc. (“IMAGE”) is a Pennsylvania corporation maintaining its principal place of business at Pottstown, Pennsylvania. During the Class Period, IMAGE acted as a broker for Oakland and/or members of the Class in purchasing Municipal Derivatives from one or more of the Municipal Derivatives Seller Defendants.

a. IMAGE's Pennsylvania offices were raided by the FBI in November, 2006, at the start of the government's investigation into anticompetitive conduct in the Municipal Derivatives market.

52. Defendant Morgan Keegan & Co., Inc. (“Morgan Keegan”), a subsidiary of Regions Financial Corp., is a Tennessee corporation maintaining its principal place of business in Memphis, Tennessee. During the Class Period, Morgan Keegan acted as a broker for Plaintiff and/or members of the Class in purchasing Municipal Derivatives from one or more of the Municipal Derivatives Seller Defendants.

a. Morgan Keegan has received a subpoena from the Securities and Exchange Commission in connection with the SEC's investigation into anticompetitive practices in the Municipal Derivatives industry.

53. Defendant PackerKiss Securities, Inc. (“PackerKiss”) is a Florida corporation maintaining its principal place of business in Delray Beach, Florida. During the Class Period, PackerKiss acted as a broker for Plaintiff and/or members of the Class in purchasing Municipal Derivatives from one or more of the Municipal Derivatives Seller Defendants.

1 54. Defendant Shockley Financial Corp. (“Shockley”), a subsidiary of NelNet
2 Inc., is a corporation maintaining its principal place of business in Aurora, Colorado. During the
3 Class Period, Shockley acted as a broker for Plaintiff and/or members of the Class in purchasing
4 Municipal Derivatives from one or more of the Municipal Derivatives Seller Defendants.

5 55. Defendant Sound Capital Management, Inc. (“Sound Capital”) is a
6 Minnesota corporation maintaining its principal place of business at Eden Prairie, Minnesota.
7 During the Class Period, Sound Capital acted as a broker for Oakland and/or members of the
8 Class in purchasing Municipal Derivatives from one or more of the Municipal Derivatives Seller
9 Defendants.

10 a. Sound Capital's Minnesota offices were raided by the FBI in
11 November, 2006, at the start of the government's investigation into anticompetitive conduct in the
12 Municipal Derivatives market.

13 56. Defendant Winters & Co. Advisors, LLC (“Winters”) is a California
14 limited liability company maintaining its principal place of business in Los Angeles, California.
15 During the Class Period, Winters acted as a broker for Plaintiff and/or members of the Class in
16 purchasing Municipal Derivatives from one or more of the Municipal Derivatives Seller
17 Defendants.

CO-CONSPIRATORS

19 57. Various other persons, firms and corporations, not named as Defendants
20 herein, have participated as co-conspirators with Defendants and have performed acts and made
21 statements in furtherance of the conspiracy.

22 58. Whenever in this Complaint reference is made to any act, deed or
23 transaction of any corporation, the allegation means that the corporation engaged in the act, deed
24 or transaction by or through its officers, directors, agents, employees or representatives while they
25 were actively engaged in the management, direction, control or transaction of the corporation's
26 business or affairs.

CLASS ACTION ALLEGATIONS

59. Oakland brings this action on behalf of itself and as a class action under the provisions of Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the following Class:

All state, local or municipal Government Entities and private entities in the United States and its territories that purchased Municipal Derivatives directly from one or more of the Municipal Derivatives Seller Defendants and/or through one or more of the Derivatives Broker Defendants at any time from January 1, 1992 through December 31, 2007. Excluded from the Class are all federal governmental entities and instrumentalities of the federal government.

60. Oakland does not know the exact number of Class members because such information is in the exclusive control of Defendants. But due to the nature of the trade and commerce involved, Oakland believes that there are hundreds or thousands of Class members as described above, the exact number and their identities being known by Defendants.

61. The Class is so numerous and geographically dispersed that joinder of all members is impracticable.

62. There are questions of law and fact common to the Class, including:

a. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain or stabilize the effective prices of Municipal Derivatives sold in the United States;

b. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to rig bids for Municipal Derivatives sold in the United States;

c. Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to allocate customers and the markets for Municipal Derivatives sold in the United States:

- d. The identity of the participants of the alleged conspiracy;
- e. The duration of the alleged conspiracy and the acts carried out by Defendants and their co-conspirators in furtherance of the conspiracy;

1 f. Whether the alleged conspiracy violated Section 1 of the Sherman
2 Act, 15 U.S.C. § 1;

3 g. Whether the conduct of Defendants and their co-conspirators, as
4 alleged in this Complaint, violated the California Cartwright Act, Cal. Bus. & Prof. Code §
5 16720, *et seq.*;

6 h. Whether the conduct of Defendants and their co-conspirators, as
7 alleged in this Complaint, violated the California Unfair Competition Law, Cal. Bus. & Prof.
8 Code § 17200, *et seq.*;

14 k. Whether the Defendants and their co-conspirators fraudulently
15 concealed the conspiracy's existence from the Oakland and the other members of the Class; and

1. The appropriate class-wide measure of damages.

17 63. Oakland is a member of the Class, Oakland's claims are typical of the
18 claims of the Class members, and Oakland will fairly and adequately protect the interests of the
19 Class. Oakland is a direct purchaser of Municipal Derivatives, and its interests are coincident
20 with, and not antagonistic to, those of the other members of the Class.

21 64. Oakland is represented by counsel who are competent and experienced in
22 the prosecution of antitrust and class action litigation.

23 65. The prosecution of separate actions by individual members of the Class
24 would create a risk of inconsistent or varying adjudications, establishing incompatible standards
25 of conduct for Defendants.

26 66. The questions of law and fact common to the members of the Class
27 predominate over any questions affecting only individual members, including legal and factual
28 issues relating to liability and damages.

1 67. A class action is superior to other available methods for the fair and
2 efficient adjudication of this controversy. The Class is readily definable and is one for which
3 records should exist. Prosecution as a class action will eliminate the possibility of repetitious
4 litigation. Treatment as a class action will permit a large number of similarly situated persons to
5 adjudicate their common claims in a single forum simultaneously, efficiently, and without the
6 duplication of effort and expense that numerous individual actions would engender. This class
7 action presents no difficulties in management that would preclude maintenance as a class action.

TRADE AND INTERSTATE COMMERCE

9 68. The activities of Defendants and their co-conspirators, as described in this
10 Complaint, were within the flow of and substantially affected interstate commerce.

11 69. During the Class Period, Defendants and their co-conspirators issued and
12 sold substantial quantities of Municipal Derivatives, in a continuous and uninterrupted flow of
13 interstate commerce to Government Entities located in states other than the states in which the
14 Municipal Derivatives Seller Defendants issued and/or brokered these products.

15 70. The conspiracy in which the Defendants and their co-conspirators
16 participated had a direct, substantial, and reasonably foreseeable effect on United States
17 commerce.

FACTS

The Market for Municipal Derivatives

71. Municipalities and state and local government agencies issue over \$2
trillion worth of municipal bonds annually.

22 72. While the tax-free bonds are sold in contemplation of construction, public
23 housing or other public-works projects, municipalities have in the last decade opted to invest the
24 proceeds of the bond sales before these projects are even started, or to hedge the interest-rate risk
25 associated with the issuance of large amounts of tax-exempt debt.

26 73. Municipal Derivatives have become an attractive investment vehicle for
27 municipalities looking to park bond proceeds until the money raised from the sale is actually
28 needed for capital projects, or to protect themselves from interest-rate risk associated with issuing

1 their tax-exempt bonds. There are roughly \$40 - \$60 billion in Municipal Derivatives created in
2 the United States annually.

3 74. The market for Municipal Derivatives has become more concentrated since
4 the late 1990's, with an increasingly smaller number of investment banks and bond insurers
5 occupying the market.

6 75. The Municipal Derivatives industry has been variously described by
7 market participants as opaque, intertwined and interconnected, all characteristics which facilitate
8 the type of illegal collusion alleged herein. The Municipal Derivatives market lacks transparency,
9 and regulatory and private efforts to impose transparency have not been successful. On July 26,
10 2007, the Chairman of the Securities and Exchange Commission delivered a white paper to
11 Congress calling for improved oversight of the municipal securities market.

The Competitive Bidding Process

13 76. A wide variety of Municipal Derivatives are sold through competitive
14 bidding undertaken by Government Entities and overseen by the Municipal Derivatives Brokers
15 acting as their fiduciaries.

16 77. The Competitive Bidding Process involving GICs is illustrative of the way
17 many Government Entities purchase Municipal Derivatives, and indicative of the methods by
18 which the Defendants have succeeded in manipulating these financial instruments pursuant to
19 their bid-rigging and customer allocation conspiracy.

20 78. Flush with proceeds from a muni bond sale, a Government Entity looks to
21 invest in a GIC. The Government Entity will retain a GIC Broker to facilitate the acquisition of
22 the contract. The Government Entities typically pay a fee to the GIC Broker for shopping for
23 GIC Bids.

24 79. In the wake of the so-called “yield-burning” scandal of the 1980’s and
25 1990’s – in which municipal bond issuers were sold overpriced investment vehicles or charged
26 fees that acted to artificially reduce the yields on their underlying bond issues – the IRS
27 promulgated regulations meant to ensure that Government Entities were purchasing Municipal
28 Derivatives at a fair market value price.

1 80. IRS tax-exempt bond regulations (here, “Treasury Regulations”) stipulate
2 that if Government Entities invest the proceeds of bond sales, the yield of the investment cannot
3 exceed the yield of the municipal bond itself. Any interest exceeding the bond rate of the tax-
4 exempt bond investments is required to be rebated to the IRS, absent an exception.

5 81. To satisfy these so-called arbitrage rules, any given GIC is structured to
6 limit the rate of interest that a municipality can earn on the GIC to less than the yield of the bond
7 whose issuance financed the investment in the GIC in the first place. The Rate of Return any
8 particular Municipal Derivatives Seller can offer a Government Entity is therefore effectively
9 capped.

10 82. Treasury Regulations related to Municipal Derivatives are aimed at
11 ensuring that Government Entities get competitive bids on the interest rate a Municipal
12 Derivatives Seller pays the municipalities under the terms of the GIC. According to Treasury
13 Regulations, a GIC is sold at “fair market value” if the bidding process satisfies certain
14 procedures. Essentially, there should be at least three reasonably competitive bids solicited from
15 Municipal Derivatives Sellers, and all of these bidders must have an equal opportunity to bid –
16 that is, no bidder can have a “last look” to review other bids before bidding on the contract.
17 Treasury Regulations state that a “reasonably competitive” Municipal Derivatives Seller is an
18 entity with “an established industry reputation” as a competitive Municipal Derivatives Seller.
19 The IRS may levy penalties under Section 6700 of the tax code when it determines bid-rigging
20 has occurred.

21 83. The Municipal Derivatives Broker, acting as the fiduciary to the
22 Government Entity, oversees the solicitation and placement of the bids from Municipal
23 Derivatives Sellers.

24 84. After hiring a Municipal Derivatives Broker to oversee the solicitation of
25 GIC Bids, Government Entities buy a GIC from a Municipal Derivatives Seller pursuant to the
26 Competitive Bidding Process.

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1 85. The parties to a GIC are the Municipal Derivatives Seller, acting as the
2 Counterparty and the Government Entity. The Municipal Derivatives Seller now acting as the
3 Counterparty supplies the most salient term, namely the Rate of Return on the investment.

4 86. The GIC entitles the Government Entity to receive the return of the
5 Government Entity's initial principal plus guaranteed interest at a specified Rate of Return, and to
6 withdraw principal from the GIC as permitted.

7 87. Generally, a Government Entity will acquire a GIC in order to invest funds
8 on deposit in a debt service reserve fund or construction fund until it needs to use such funds to
9 service debt or fund the payment of project expenses in accordance with the underlying bond
10 documents.

11 88. In exchange for the payment of a guaranteed Rate of Return to the
12 Government Entity, and the full repayment of all principal on a date certain, the Municipal
13 Derivatives Counterparty is allowed to invest the principal furnished by the Government Entity.
14 The Municipal Derivatives Counterparty's profits are made on the spread between the Rate of
15 Return the Municipal Derivatives Counterparty offers to the Government Entity and the returns
16 the GIC's invested principal makes for the Municipal Derivatives Counterparty pursuant to
17 whatever investment the Municipal Derivatives Counterparty chooses.

18 89. The Competitive Bidding Process outlined in the Treasury Regulations
19 mandates that any Government Entity seeking to buy a GIC receive at least three bona fide Bids
20 from Municipal Derivatives Sellers. Each bidder typically faxes its Bid into the Municipal
21 Derivatives Broker, which collects the ostensibly competitive Bids and informs the Government
22 Entity of the range of Bids, the identity of the Municipal Derivatives Sellers submitting them, and
23 the time each Bid was received.

24 90. Each GIC Bid includes a statement that the Bid was determined without
25 regard to any other formal or informal agreement with another Municipal Derivatives Seller, and
26 that the Bid was not submitted solely as a so-called "courtesy" Bid.

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1 91. The Municipal Derivatives Seller that offers the highest-yielding Rate of
2 Return is selected as the Counterparty, often within hours of the close of the Competitive Bidding
3 Process.

4 92. The vast majority of GICs purchased in the United States are purchased
5 pursuant to the competitive bidding process established by Treasury Regulation §1.148-5 *et seq.*,
6 which has been in effect since approximately 1993, and which are only some of the Treasury
7 Regulations governing the reinvestment of municipal bond proceeds.

8 93. The entire GIC bidding and purchasing process, as well as those processes
9 relating to the purchase of other types of Municipal Derivatives, is susceptible to abuse even
10 when dealings involve sophisticated and experienced Government Entities.

11 94. Even sophisticated Government Entities (who rely in large part on the
12 Municipal Derivatives Broker Defendants acting as their fiduciaries) may not know that they are
13 the target of the bid-rigging and customer allocation conspiracy alleged herein.

The Bid-Rigging Conspiracy

15 95. The potential for bid-rigging in any given GIC transaction exists in the
16 exploitation of the Rate of Return that a particular GIC Seller is willing to offer to a Government
17 Entity looking to invest its bond proceeds. The Municipal Derivatives Seller Defendants, aided
18 by the Municipal Derivatives Broker Defendants, have turned the Treasury Regulations into a
19 travesty by exploiting Government Entities' need for reinvestment of bond proceeds.

20 96. The Municipal Derivatives Seller Defendants, in concert with the
21 Municipal Derivative Brokers, similarly exploited the elements of other types of Municipal
22 Derivatives bought by Government Entities as part of their bid-rigging and customer allocation
23 conspiracy.

24 97. Bid-rigging of GIC transactions, which are illustrative of anticompetitive
25 conduct in the overall market for Municipal Derivatives, typically occurs when only one firm
26 submits a reasonable, financially viable Bid, and the other two or more bidders submit Bids
27 offering unjustifiably low Rates of Return, or simply refuse (or “pass”) on the opportunity to bid.

1 98. Other times, bids are late or incomplete, leaving only one viable bid for the
2 Government Entity to choose from.

3 99. Although at least one market participant has recently attempted to add
4 transparency to the market by developing a web-based bid auction service, GIC Bids are
5 traditionally done over the phone or sent to Municipal Derivatives Brokers via fax, facilitating
6 collusion of the type alleged herein.

7 100. At least one investment bank has provided the government with transcripts
8 of telephone conversations that indicated that the investment bank and other market participants
9 were involved in anticompetitive conduct on Municipal Derivatives sold to Government Entities.

10 101. While the winning bid may be financially viable in light of the Treasury
11 Regulations' restrictions on bond issue reinvestment, it is not necessarily at fair market value, and
12 does not necessarily provide the Government Entity with the best possible Rate of Return on the
13 investment it is seeking by buying the GIC.

14 102. The unrealistically low bids – dubbed “courtesy bids” because they are
15 provided solely as a courtesy so that another Municipal Derivatives Seller can win on a bid that is
16 below fair market value – are often more than 100 basis points below the winning bid. As Mark
17 Scott, director of the IRS tax exempt bond office, stated in *The Bond Buyer* on January 6, 2005,
18 “When a bid is 100 to 150 basis points below the market and there is no justification for that
19 being so low, one of the assumption you can draw is that there are courtesy bids being provided.”

20 103. Often the winning bid is the only one high enough to make the GIC work
21 and be a worthwhile reinvestment vehicle for the Government Entity.

22 104. According to a speaker at a recent teleconference organized by the National
23 Association of Bond Lawyers and reported in *The Bond Buyer* on February 8, 2007, the use of
24 courtesy bids in GICs transactions is quite prevalent. IRS officials have stated that bid-rigging is
25 a wide and pervasive practice in GIC transactions and have uncovered numerous transactions
26 involving rigged bids and customer allocation. A number of these transactions involve both the
27 Municipal Derivatives Seller Defendants and the Municipal Derivatives Broker Defendants.

1 105. Municipal Derivatives Brokers also routinely offer favored Municipal
2 Derivatives Sellers with an illegal “last look” at their competitors’ submitted bids, or even
3 exclude potential bidders without the Government Entity’s knowledge.

4 106. Evidence seized by the federal government as part of its wide-ranging
5 investigation, including taped telephone conversations, revealed instances in which the winning
6 bidder was given a “last look” at other bids, or bidders were asked to bid low in exchange for
7 preferential treatment in later deals.

8 107. As part of its ongoing investigation into these practices, the IRS also
9 uncovered several bidding schemes that allowed the Municipal Derivatives Seller to underpay for
10 the GIC – that is, provide a less than fair market value interest rate – and then overpay the
11 Municipal Derivatives Broker for other investment agreements or remarketing fees associated
12 with the GIC, a form of kickback that may jeopardize the tax-exempt status of the underlying
13 bond or result in excess “arbitrage” paid to the federal government.

14 **Governmental Investigations of Defendants’ Conspiracies**

15 108. On Wednesday, November 15, 2006, the FBI began a series of nationwide
16 raids on numerous Municipal Derivatives Brokers, including the Municipal Derivatives Broker
17 Defendants. The FBI raids coincided with the service of nearly two dozen subpoenas on other
18 participants in the Municipal Derivatives business, including the Municipal Derivatives Sellers
19 named as Defendants herein.

20 109. The DOJ’s Antitrust Division served subpoenas from a grand jury sitting in
21 the Southern District of New York, and a number of the targeted companies revealed that they
22 had also received subpoenas from the Securities and Exchange Commission in connection with a
23 parallel civil probe.

24 110. The Antitrust Division is conducting a criminal probe into anticompetitive
25 conduct, including bid-rigging and customer allocation, and the DOJ is contemplating charging
26 market participants with continuing acts of conspiracy, and (as detailed above) have targeted a
27 number of individuals for indictment.

28

1 111. The SEC probe, entitled *In the Matter of Certain GIC Brokers*, is focused
2 on securities fraud in municipal bond deals undertaken since 2000. Upon information and belief,
3 the SEC is investigating Municipal Derivatives Sellers' non-disclosure of an extensive scheme
4 involving kickbacks to Municipal Derivatives Brokers, a scheme that acted as a necessary
5 corollary to the conspiracy alleged herein. Such non-disclosure of kickbacks to Municipal
6 Derivatives Brokers jeopardizes the tax-exempt status of Government Entities' bonds, or may
7 subject them to potentially excessive arbitrage payments to the federal government.

8 112. The DOJ and SEC investigations follow a lengthy and continuing probe by
9 the IRS' Criminal Investigation Division and its Tax-Exempt Bond office.

10 113. The Justice Department subpoenas asked for documents, e-mails, tapes or
11 notes of phone conversations and other information regarding "contracts involving the investment
12 or reinvestment of the proceeds of tax-exempt bond issues and qualified zone academy bonds [as
13 well as] related transactions involving the management or transferal of the interest rate risk
14 associated with those bonds, including but not limited to [GICs], forward supply, purchase or
15 delivery agreements; repurchase agreements; swaps; options; and swaptions."

16 114. The subpoenas also demanded organizational charts, phone directories, and
17 lists of all employees involved with Municipal Derivatives, in addition to all documents
18 associated with what the subpoenas apparently described as "relevant municipal contracts
19 awarded or intended to be awarded pursuant to competitive bidding," which would include
20 invitations to bid; solicitations, notices or RFPs issued to any provider by municipal clients;
21 actual or proposed responses to those RFPs; and amounts and prices bid for the various
22 investment vehicles.

23 115. On February 9, 2007, Defendant Bank of America announced that it
24 entered into a leniency agreement with the Justice Department in connection with what it
25 described as "the Department's investigation into anticompetitive practices in the municipal
26 derivatives industry."

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1 116. Defendant Bank of America noted that the amnesty grant “was the result of
2 the company voluntarily providing information to the Department before the Department began
3 its investigation, as well as the company’s continuing cooperation.”

4 117. Entry into the DOJ’s amnesty program follows presentation of evidence of
5 a *per se* antitrust violation on behalf of the applicant, in this instance Defendant Bank of America.
6 Evidence of Defendant Bank of America’s dealings, including recorded telephone conversations
7 of traders giving courtesy bids, was one of the key galvanizers of the criminal investigation. Key
8 derivatives officials at the bank were placed on “administrative leave,” including Dean Pinard, the
9 head of BOA’s derivatives department.

10 118. Defendant Bank of America also disclosed that it had reached a \$14.7
11 million settlement with the IRS relating to the company’s role in providing GICs and other
12 agreements to municipal bond issuers.

13 119. As detailed in Paragraphs 16 to 53 above, a number of individuals have
14 been targeted for indictment by the Department of Justice, and a number of Municipal Derivatives
15 Seller Defendants are facing civil and administrative actions from the SEC in relation to that
16 agency’s investigation into anticompetitive practices in the Municipal Derivatives market.

17 **FRAUDULENT CONCEALMENT**

18 120. Oakland and members of the Class had no knowledge of the agreement,
19 contract, combination, and conspiracy alleged in this Complaint, or of any facts that might have
20 led to the discovery thereof, until shortly before the filing of this action. Oakland could not have
21 discovered the agreement, contract, combination, and conspiracy at an earlier date by the exercise
22 of reasonable diligence because of the deceptive practices and methods of secrecy employed by
23 Defendants and their co-conspirators to avoid detection of, and fraudulently conceal, their
24 agreement, contract, combination, and conspiracy. These methods of secrecy included, but were
25 not limited to, secret meetings, misrepresentations concerning the reasons for price increases,
26 encouraging witnesses to give false testimony to the grand jury and government officials, and
27 destroying or concealing evidence of their illegal conduct.

28

1 121. The affirmative acts of the Defendants alleged herein, including acts in
2 furtherance of the conspiracy, were wrongfully concealed and carried out in a manner that
3 precluded detection.

4 122. By their very nature, Defendants' bid-rigging and customer-allocation
5 conspiracy was inherently self-concealing. The Municipal Derivatives industry is not exempt
6 from antitrust regulation, and thus Oakland reasonably considered it to be a well-regulated
7 competitive industry.

8 123. In the context of the circumstances surrounding Defendants' pricing
9 practices, Defendants' acts of concealment were more than sufficient to preclude suspicion by a
10 reasonable person that defendants' bidding and pricing were conspiratorial. Accordingly, a
11 reasonable person under the circumstances would not have been alerted to investigate the
12 legitimacy of Defendants' proffered Municipal Derivatives prices.

13 124. Oakland and members of the Class could not have discovered the alleged
14 contract, conspiracy, or combination at an earlier date by the exercise of reasonable diligence
15 because of the deceptive practices and techniques of secrecy employed by Defendants and their
16 co-conspirators to avoid detection of, and fraudulently conceal, their contract, combination or
17 conspiracy. Such practices are especially prevalent in bid-rigging and customer-allocation
18 conspiracies such as the one alleged herein.

19 125. Because the alleged conspiracy was both self-concealing and affirmatively
20 concealed by Defendants and their co-conspirators, Oakland and members of the Class had no
21 knowledge of the alleged conspiracy, or of any facts or information that would have caused a
22 reasonably diligent person to investigate whether a conspiracy existed.

23 126. As a result of Defendants' fraudulent concealment of their conspiracy, the
24 running of any statute of limitations has been tolled with respect to any claims that Oakland and
25 members of the Class have alleged in this Complaint.

26 127. Throughout the Class Period, Defendants and their co-conspirators
27 affirmatively and fraudulently concealed their unlawful conduct.
28

1 128. Oakland and the Class members did not discover, nor could have
2 discovered through reasonable diligence, that Defendants and their co-conspirators were violating
3 the antitrust laws until before this litigation was commenced because Defendants and their co-
4 conspirators used and continue to use deceptive and secret methods to avoid detection and to
5 affirmatively conceal their violations. Nor could Oakland or the Class members have discovered
6 the violations earlier than that time because Defendants and their co-conspirators conducted their
7 conspiracy secretly, concealed the nature of their unlawful conduct and acts in furtherance
8 thereof, and fraudulently concealed their activities through various other means and methods
9 designed to avoid detection.

10 129. Defendants and their co-conspirators engaged in a successful
11 anticompetitive conspiracy concerning Municipal Derivatives, which they affirmatively
12 concealed, at least in the following respects:

13 a. By meeting secretly to discuss effective prices, bids, and customers
14 and markets of Municipal Derivatives in the U.S.;

15 b. By agreeing among themselves not to discuss publicly, or otherwise
16 reveal, the nature and substance of the acts and communications in furtherance of their illegal
17 scheme;

18 c. By intentionally creating the false appearance of competition by
19 staging sham auctions in which the results were pre-determined; and

20 d. By furnishing each other participant in all given bidding sessions
21 with illegal “last looks” at their ostensible competitors’ bids.

22 130. Oakland and Class members did not know, and could not have discovered
23 through reasonable diligence, that the auctions arranged by the Derivatives Broker Defendants
24 were sham, and that rather than being competitive, the results of the auctions were rigged.

25 131. As a result of Defendants’ fraudulent concealment, all applicable statutes
26 of limitations affecting the Oakland’s and the Class’ claims have been tolled.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Violation of Section 1 of the Sherman Act)

132. From as early as January 1, 1992 through the present, Defendants and their co-conspirators engaged in a continuing contract, combination or conspiracy with respect to the sale of Municipal Derivatives in the United States in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

133. The contract, combination or conspiracy consisted of an agreement among the Defendants and their co-conspirators to fix, raise, stabilize or maintain at artificially supracompetitive prices for Municipal Derivatives and to rig bids and to allocate customers and markets for Municipal Derivatives in the United States.

134. In formulating and effectuating this conspiracy, Defendants and their co-conspirators did those things that they combined and conspired to do, including:

a. participating in meetings and conversations among themselves during which they agreed to price Municipal Derivatives at certain levels, and otherwise to fix, increase, maintain or stabilize effective prices paid by Oakland and members of the Class with respect to Municipal Derivatives sold in the United States and to rig bids and allocate customers and markets of Municipal Derivatives;

b. arranging sham auctions among the Municipal Derivatives Seller Defendants that were designed to create the appearance of competition for the sale of Municipal Derivatives, but in which the result had been agreed upon among the Defendants and co-conspirators;

c. allocating customers and markets for Municipal Derivatives in the United States in furtherance of their agreements;

d. rigging bids for Municipal Derivatives sold in the United States;
and

e. participating in meetings and conversations among themselves to implement, adhere and police the agreements they reached.

1 135. Defendants and their co-conspirators engaged in the actions described
2 above for the purpose of carrying out their unlawful agreements to fix, maintain, decrease or
3 stabilize prices and to allocate customers and markets with respect to Municipal Derivatives.

4 136. The Defendants' unlawful contract, combination or conspiracy has had at
5 least the following effects:

6 a. Effective prices paid by Oakland and the members of the Class with
7 respect to Municipal Derivatives were fixed, stabilized and maintained at artificially low and non-
8 competitive levels in the United States;

9 b. Bids for Municipal Derivatives sold in the United States were
10 rigged;

11 c. Customers and markets for Municipal Derivatives were allocated
12 among Defendants and their co-conspirators;

13 d. Oakland and the other members of the Class paid more or received
14 lower Rates of Return for the Municipal Derivatives they purchased than they would have paid in
15 a competitive marketplace, unfettered by Defendants' and their co-conspirators' collusive and
16 unlawful activities;

17 e. Price competition with respect to the sale of Municipal Derivatives
18 was restrained, suppressed and eliminated in the United States; and

19 f. As a direct and proximate result of the illegal combination, contract
20 or conspiracy, Oakland and the members of the Class have been injured and financially damaged
21 in their businesses and property, in amounts to be determined, by being deprived of the highest-
22 allowable interest rate on its Municipal Derivatives investment. The courtesy (sometimes also
23 called complimentary) bids submitted by the Municipal Derivatives Sellers defrauded the
24 Government Entities by creating the appearance of competition to conceal the secretly deflated
25 interest rate offers.

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SECOND CLAIM FOR RELIEF
(Violation of the California Cartwright Act, Cal. Bus. & Prof. Code section 16720, et seq.)

137. Oakland, on behalf of itself and all others similarly situated, realleges and
incorporates, as if fully alleged herein, each of the allegations contained in the preceding
paragraphs of this Complaint, and further alleges against Defendants as follows.

138. The unlawful conduct of Defendants, including the Defendants
headquartered or based in California, was centered in and carried out within California, and
Defendants' conduct within California injured all members of the Class throughout the United
States. Therefore, this claim for relief under California law is brought on behalf of all members
of the Class, whether or not they are California residents.

139. Beginning at least as early as January 1, 1992 through the present, the exact
dates being unknown to Oakland, Defendants and various co-conspirators entered into and
engaged in a continuing unlawful trust in restraint of the trade and commerce described above in
violation of Section 16720, California Business and Professional Code. Defendants, and each of
them, have acted in violation of Section 16720 to fix, raise, stabilize and maintain prices of,
allocate markets and rig bids for, Municipal Derivatives.

140. For the purpose of forming and implementing the alleged combinations,
trusts, agreements, understandings and concert of action, Defendants and their co-conspirators did
those things they conspired to do, including but not limited to the acts alleged above, including
actions:

- a. to fix, raise, maintain and stabilize the price of Municipal
Derivatives;
- b. to allocate markets for Municipal Derivatives amongst themselves;
and
- c. to submit rigged bids for Municipal Derivatives.

141. In formulating and carrying out the alleged combinations, trusts,
agreements, understandings and concert of action, Defendants and their co-conspirators engaged
in anticompetitive activities, the purpose and effect of which were (a) to artificially raise, fix,

1 maintain, or stabilize the prices of Municipal Derivatives; (b) to allocate among themselves
2 Municipal Derivatives markets and customers; and (c) to facilitate, effectuate, and implement the
3 contract, combination, and conspiracy.

4 142. The combination and conspiracy alleged herein has had the following
5 effects, among others:

6 a. Price competition in the sale of Municipal Derivatives has been
7 restrained, suppressed and/or eliminated in the State of California and throughout the United
8 States;

14 143. As a direct and proximate result of the illegal combination, trust,
15 agreement, understanding and concert of action, Oakland and the members of the Class have been
16 injured in their business and property in that they paid more for Municipal Derivatives than they
17 otherwise would have paid in the absence of Defendants' unlawful conduct.

18 144. As a result of Defendants' violation of Section 16720 of the California
19 Business and Professions Code, Oakland seeks treble damages and the costs of suit, including
20 reasonable attorneys' fees, pursuant to Section 16750(a) of the California Business and
21 Professions Code.

THIRD CLAIM FOR RELIEF
(Violation of the California Unfair Competition Law,
Cal. Bus. & Prof. Code section 17200, *et seq.*)

24 145. Oakland, on behalf of itself and all others similarly situated, realleges and
25 incorporates, as if fully alleged herein, each of the allegations contained in the preceding
26 paragraphs of this Complaint, and further alleges against Defendants as follows.

27 146. Defendants' unlawful conduct was centered in, carried out and perfected
28 mainly within the State of California, and Defendants' conduct within California injured all

1 members of the Class throughout the United States. Therefore, this claim for relief under
2 California law is brought on behalf of all members of the Class, whether or not they are
3 California residents.

4 147. Beginning at least as early as January 1, 1992 and continuing to the
5 present, the exact dates being unknown to Oakland, Defendants committed acts of unfair
6 competition, as defined by Sections 17200, *et seq.* of the California Business and Professions
7 Code, commonly known as the Unfair Competition Law, by engaging in the acts and practices
8 specified above.

9 148. Oakland and the members of the Class bring this claim pursuant to
10 Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution
11 and/or disgorgement from these Defendants for acts, as alleged herein, that violate the Unfair
12 Competition Law.

13 149. Defendants' acts, omissions, misrepresentations, practices and non-
14 disclosures, as alleged herein, constitute a common course of conduct of unfair competition by
15 means of unfair, unlawful and/or fraudulent business acts or practices within the meaning of
16 California Business and Professions Code, Section 17200, *et seq.*, in that, for example:

17 a. the violations of Section 16720, *et seq.*, of the California Business
18 and Professions Code, set forth above;

19 b. the acts described above violate the Sherman Act, 15 U.S.C. § 1;

20 c. Defendants' acts, omissions, misrepresentations, practices and
21 nondisclosures, as described above, whether or not in violation of Section 16720, *et seq.* of the
22 California Business and Professions Code, and whether or not concerted or independent acts, are
23 otherwise unfair, unconscionable, unlawful or fraudulent;

24 d. Defendants' act and practices are unfair to consumers of Municipal
25 Derivatives in the State of California and throughout the United States, within the meaning of
26 Section 17200, California Business and Professions Code; and

27 e. Defendants' acts and practices are fraudulent or deceptive within
28 the meaning of Section 17200 of the California Business and Professions Code.

1 150. Oakland and each of the Class members are entitled to full restitution
2 and/or disgorgement of all revenues, earnings, profits, compensation and benefits which may
3 have been obtained by Defendants as a result of such business acts or practices.

4 151. The unlawful and unfair business practices of Defendants, and each of
5 them, as described above, have caused Oakland and the members of the Class to pay supra-
6 competitive and artificially-inflated prices for Municipal Derivatives. Oakland and the members
7 of the class suffered injury in fact and lost money or property as a result of such unfair
8 competition.

9 152. The conduct of Defendants as alleged in this Complaint violates
10 Section 17200 of the California Business and Professions Code.

11 153. As alleged in this Complaint, Defendants and their co-conspirators have
12 been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair
13 competition. Oakland and the members of the Class are accordingly entitled to equitable relief
14 including restitution and/or disgorgement of all revenues, earnings, profits, compensation and
15 benefits which may have been obtained by Defendants as a result of such business practices,
16 pursuant to the California Business and Professions Code, Sections 17203 and 17204.

PRAYER FOR RELIEF

18 || WHEREFORE, the Plaintiff prays for relief as follows:

19 1. That the Court determine that this action may be maintained as a class
20 action under Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that Oakland be
21 certified as a class representative and Oakland's counsel be appointed as counsel for the Class;

22 2. That the unlawful contract, combination or conspiracy alleged be adjudged
23 and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of the
24 Sherman Act and Section 16720, *et seq.*, of the California Business & Professions Code (the
25 Cartwright Act);

26 3. That the unlawful contract, combination or conspiracy alleged be adjudged
27 and decreed to be unfair, fraudulent, and illegal in violation of Section 17200, *et seq.*, of the
28 California Business & Professions Code (the Unfair Competition Law);

1 4. That Oakland and the Class recover damages and restitution, as provided
2 by law, determined to have been sustained as to each of them, in an amount to be trebled in
3 accordance with the antitrust laws, and that judgment be entered against defendants on behalf of
4 Oakland and of the Class;

5 5. That Oakland and the Class recover their costs of the suit, including
6 attorneys' fees, as provided by law; and

7 6. For such other and further relief as is just under the circumstances.

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial as to all issues triable by a jury.

Dated: April __, 2008

By: _____
John A. Russo

John A. Russo, City Attorney (SBN 063203)
jrusso@oaklandcityattorney.org
Barbara Parker, Chief Asst. City Attorney (SBN 069722)
bparker@oaklandcityattorney.org
Mark Morodomi, Supervising Deputy City Attorney
(SBN 120914)
mmorodomi@oaklandcityattorney.org
Kathleen Salem-Boyd, Deputy City Attorney (SBN
100179)
ksalemboyd@oaklandcityattorney.org
CITY OF OAKLAND
One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612
Telephone: (510) 238-3034
Facsimile: (510) 238-6500

Richard M. Heimann (SBN 63607)
rheimann@lchb.com
Joseph R. Saveri (SBN 130064)
jsaveri@lchb.com
Eric B. Fastiff (SBN 182260)
efastiff@lchb.com
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 30th Floor
San Francisco, CA 94111
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

James A. Quadra (SBN 131084)
quadra@meqlaw.com
Sylvia Sokol (SBN 200126)
sokol@meqlaw.com
MOSCONÉ, EMBLIDGE & QU
220 Montgomery Street
Mills Tower, Suite 2100
San Francisco, CA 94104
Telephone: (415) 362-3599
Facsimile: (415) 362-2006

1 Steven E. Fineman (SBN 140335)
2 *sfineman@lchb.com*
3 Daniel E. Seltz
4 *dseltz@lchb.com*
5 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
6 780 Third Avenue, 48th Floor
7 New York, NY 10017
8 Telephone: (212) 355-9500
9 Facsimile: (212) 355-9592

10 *Attorneys for Individual and Representative Plaintiff*
11 *City of Oakland, California*

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